

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LORETTA G. LEWIS and U.S. POSTAL SERVICE,
POST OFFICE, Winslow, AZ

*Docket No.03-1712; Submitted on the Record;
Issued October 2, 2003*

DECISION and ORDER

Before ALEC J. KOROMILAS, COLLEEN DUFFY KIKO,
DAVID S. GERSON

The issue is whether appellant's claim for continuation of pay is barred by the time limitation provision of 5 U.S.C. § 8118 of the Federal Employees' Compensation Act.

On May 8, 2003 appellant, then a 31-year-old sales service associate, filed a Form CA-1, notice of traumatic injury and claim for continuation of pay/compensation, alleging that on March 21, 2003 she injured her low back and both legs from lifting a tub of mail out of a cage. By decision dated May 21, 2003, the Office of Workers' Compensation Programs determined that appellant was not entitled to continuation of pay on the grounds that her notice of traumatic injury was not timely filed within the 30-day period following the employment injury.¹

The Board finds that appellant's claim for continuation of pay is barred by the applicable time limitation provisions of the Act.

Section 8118 of the Act provides for payment of continuation of pay, not to exceed 45 days, to an employee "who has filed a claim with his immediate superior on a form approved by the Secretary of Labor within the time specified in section 8122(a)(2) of this title."² The latter section provides that written notice of injury shall be given "within 30 days." The context of section 8122 makes clear that this means within 30 days of the injury.³ While a specific form is not required for filing of written notice, it is necessary that a filing contain words of claim or words which could be so construed.

¹ By a separate decision also dated May 21, 2003, the Office accepted appellant's claim for lumbar strain and a recurrence of disability "on or about May 1, 2003."

² 5 U.S.C. § 8118.

³ See *George A. Harrell*, 29 ECAB 338 (1978); see also 20 C.F.R. § 10.205(a)(2).

Appellant filed a Form CA-1, notice of traumatic injury and claim for continuation of pay/compensation, on May 8, 2003. As this was more than 30 days after her March 21, 2003 injury, the Board finds that the Office properly denied the claim for continuation of pay.

The Board has held that the responsibility for filing a claim rests with the injured employee.⁴ Further, the Board has held that section 8122(d)(3) of the Act, which allows the Office to excuse failure to comply with the time limitation provision for filing a claim for compensation because of “exceptional circumstances,” is not applicable to section 8118(a),⁵ which sets forth the filing requirements for continuation of pay.⁶ There is, therefore, no provision in the Act for excusing an employee’s failure to file a claim for continuation of pay within 30 days of the employment injury.⁷ Thus, since appellant filed the Form CA-1 more than 30 days after the March 21, 2003 employment-related injury, her claim for continuation of pay is barred by the applicable time limitation provision.⁸

The decision of the Office of Workers’ Compensation Programs dated May 21, 2003 is hereby affirmed.⁹

Dated, Washington, DC
October 2, 2003

Alec J. Koromilas
Chairman

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

⁴ See *Catherine Budd*, 33 ECAB 1011 (1982).

⁵ 5 U.S.C. § 8118(a).

⁶ 5 U.S.C. § 8122(d)(3); see also *Michael R. Hrynychuk*, 35 ECAB 1094 (1984).

⁷ *Id.*

⁸ *William E. Ostertag*, 33 ECAB 1925 (1982).

⁹ As stated previously, on May 21, 2003, the Office accepted appellant’s claim for lumbar strain. See *supra* note 2.